

RESOLUTION NO. 23-2013

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
NATIONAL CITY RECOMMENDING THAT THE CITY COUNCIL ORDER
THE AFFIRMATIVE TERMINATION BY AMORTIZATION OF THE NONCONFORMING
LAND USE LOCATED**

**AT 108 W. 18th STREET, AND RECOMMENDING A REASONABLE
AMOUNT OF TIME IN WHICH SUCH USE SHALL BE ORDERED TERMINATED
(JOSE'S AUTO ELECTRIC)**

WHEREAS, prior to March 10, 2010, the real property commonly known as 108 W. 18th Street was located in the Light Manufacturing-Residential (MLR) zone, and was devoted to automotive repair, specializing in tune-ups and brake repair, which was an allowed use in said zone; and

WHEREAS, on March 10, 2010, the City Council of the City of National City adopted Resolution No. 2010-44, approving a General Plan amendment to change the land use designations for the Westside Specific Plan Area from Light Manufacturing Residential (MLR), Civic Institutional – Open Space (IC-OS), Light Manufacturing – Planned Development (ML-PD), Tourist Commercial – Planned Development (CT-PD), and Heavy Commercial (CH) to Open Space Reserve (OSR), Residential – Single Family (RS-4), Mixed Use Commercial – Residential (MCR-1), Mixed Use Commercial – Residential (MCR-2), Limited Commercial (CL), and Civic Institutional (IC) within the Westside Specific Plan area east of I-5, west of National City Boulevard, north of Mile of Cars Way, and south of Plaza Boulevard; and

WHEREAS, also on March 10, 2010, the City Council adopted Resolution No. 2010-45, adopting the Westside Specific Plan for an area located east of I-5, west of National City Boulevard, north of Mile of Cars Way, and south of Plaza Boulevard; and

WHEREAS, on August 3, 2010, the City Council adopted Ordinance No. 2010-2344, amending Chapters 18.10, 18.14, 18.16, 18.50, 18.58, 18.62, 18.88, 18.104, 18.108, and 18.140 of the National City Municipal Code to provide standards implementing the approved Westside Specific Plan; and

WHEREAS, the real property commonly known as 108 W. 18th Street is located in the Westside Specific Plan area; and

WHEREAS, as a result of the City Council's adoption of Resolution No. 2010-44, approving a General Plan amendment, and of Resolution No. 2010-45, approving the Westside Specific Plan, and of Ordinance No. 2010-2344, amending the Municipal Code to provide standards to implement the Westside Specific Plan, the real property commonly known as 108 W. 18th Street was rezoned to the Limited Commercial (CL) zone; and

WHEREAS, pursuant to Section 18.11.010 of the National City Municipal Code, a nonconforming land use occurs when the land use was lawful before a zoning regulation under the Land Use Code was enacted or amended, but that land use becomes prohibited after the regulation is enacted or amended; and

WHEREAS, because specialized automotive repair is not a permitted use in the Limited Commercial zone, upon the effective date of Resolution No. 2010-44, Resolution 2010-45, and Ordinance No. 2010-2344, said use became a nonconforming use on the real property commonly known as 108 W. 18th Street; and

WHEREAS, Section 18.11.100 of the National City Municipal Code, titled *Affirmative Termination by Amortization*, was enacted in 2006. Subsection (D)(1) of Section 18.11.100 provides, in relevant part, that the City Council may order a nonconforming use to be terminated within a reasonable amount of time, upon recommendation of the Planning Commission; that the Planning Commission shall conduct a public hearing after 10 days' written notice to the nonconforming user; and that in making its recommendation to terminate a nonconforming use and in recommending a reasonable amount of time in which such use shall be terminated, the Planning Commission shall consider the following:

- a) The total cost of the land and improvements;
- b) The length of time the use has existed;
- c) Adaptability of the land and improvements;
- d) The cost of moving and reestablishing the use elsewhere;
- e) Whether the use is significantly nonconforming;
- f) Compatibility with the existing land use patterns and densities of the surrounding neighborhood;
- g) The possible threat to the public health, safety, or welfare;
- h) Any other relevant factors;

and

WHEREAS, in 2010, the City was awarded a technical assistance grant from the United States Environmental Protection Agency (EPA). The grant allowed the EPA and its consultant to develop a process to rank nonconforming uses in the Westside Specific Plan area using a set of objective criteria that were applied to each property and land use within the Specific Plan area. The ranking process was intended for the purpose of ranking properties with nonconforming uses within the Specific Plan area, and as a means to prioritize those properties, with those properties with the highest priority being the first to be considered for affirmative termination through amortization, subject to consideration of the factors set forth in Section 18.11.100 (D)(1) of the Municipal Code; and

WHEREAS, on July 17, 2013, pursuant to Section 18.11.100 (D)(1) of the Municipal Code, the City served a written notice of public hearing upon the owners of Jose's Auto Electric, the owners of the nonconforming specialized automotive repair business at 108 W. 18th Street. The notice advised the owners that the Planning Commission would hold a public hearing on August 19, 2013, after the hour of 6:00 p.m., in the City Council Chambers at 1243 National City Boulevard, to consider a recommendation on the affirmative termination by amortization of the nonconforming specialized automotive repair business at 108 W. 18th Street; and

WHEREAS, on August 19, 2013, after the hour of 6:00 p.m., the Planning Commission held a hearing in the City Council Chambers at 1243 National City Boulevard, at which time the Commission considered recommendations on the affirmative termination by amortization, and on the reasonable amount of time in which such amortization should occur, concerning the specialized automotive repair business at 108 W. 18th Street. At said hearing, the Commission considered the Staff Report and other oral and documentary evidence, including the testimony of Brian P. Brinig, a business valuation consultant, the testimony of Raymond Pe, Principal Planner for the City, and Michael Garcia, a land use consultant.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of National City as follows:

1. That based upon the Staff Report and other oral and documentary evidence received at the time of the hearing, in making its recommendation to the City Council to terminate the use of the real property at 108 W. 18th Street for a specialized automotive repair business, and in recommending a reasonable amount of time in which such use shall be terminated, the Planning Commission makes the following findings pursuant to Section 18.11.100 (D)(1)(a)-(h) of the Municipal Code:

a) The total cost of the land and improvements.

- (1) The term of the business owners' existing lease ends on November 30, 2018, with a current rent of \$2,200 per month. The business owners have an option to extend the lease term for two additional years at the same monthly rent.
- (2) The assessed value of the land and improvements was obtained for the San Diego County Assessor's Office, and was considered as being potentially relevant to the analysis. However, a business enterprise that operates under a real property lease does not own the land or real property improvements from which it operates.

- (3) Consequently, the historical cost of the land and improvements are not relevant to the analysis in this case.

b) The length of time the use has existed.

- (1) According to the City's business license records, the current specialized automotive repair use has existed at this location since October 30, 2008.
- (2) The business relocated from 140 W. 18th Street, where it had been located since 2006.
- (3) Because the owners of Jose's Auto Electric have operated at this location since October 30, 2008, the owners have operated longer than the period necessary to recover their investment.

c) Adaptability of the land and improvements to a currently permitted use.

- (1) The land area exceeds the minimum required by the Limited Commercial zone.
- (2) The building size exceeds the minimum required by the Limited Commercial zone.
- (3) The building does not meet the minimum setbacks required by the Limited Commercial zone.
- (4) The building floor area meets the Floor Area Ratio requirements of the Limited Commercial zone.
- (5) The building does not exceed the maximum height allowed by the Limited Commercial zone.
- (6) The property does not meet the parking requirements of the Limited Commercial zone.
- (7) The building would require major, costly rehabilitation to convert it to a type suitable for use in the Limited Commercial zone.
- (8) The site frequently experiences flooding from November through February, due to its location immediately adjacent to Paradise Creek, which would make conversion of the use to retail or office use difficult.

d) The cost of moving and reestablishing the use elsewhere.

- (1) In addition to cars, various materials, tools, and office equipment used by this type of automotive repair business have been observed on this site.
- (2) Based on an analysis of this use, its relocation would require labor for packing, moving, and unpacking, rental of a forklift, and the towing of cars.
- (3) To reestablish this use elsewhere would require searching for the new location; securing the new site (e.g., security deposit);

reestablishing phone, internet, business cards, and letterhead; marketing; and making tenant improvements (e.g., flooring, storage, shelving, lifts, electrical upgrades).

(4) The estimated relocation cost for this use is \$7,200.

(5) The estimated cost to reestablish this use is \$5,900.

e) Whether the use is significantly nonconforming.

(1) This automotive repair use is a significantly nonconforming use in the Limited Commercial zone.

(2) The specialized automotive repair use could be converted to a retail or office use as allowed in the Limited Commercial zone after significant investment in building rehabilitation.

f) Compatibility with the existing land use patterns and densities of the surrounding neighborhood.

(1) The specialized automotive repair use is compatible with some of the adjacent, existing land use patterns, namely, other automotive repair uses; however, these other uses are not in conformance with the land uses allowed by the Westside Specific Plan.

(2) The use is not in close proximity to residential uses.

g) The possible threat to the public health, safety, or welfare.

(1) Notices of violation have been issued but have been resolved.

(2) The use does not have all required permits.

(3) No open violations of unlawful discharges into the stormwater system are on record.

(4) Hazardous materials are stored on the site.

(5) No open storage of hazardous materials occurs on the site.

(6) Security measures such as fencing are in place on the site.

(7) One of the parcels on which the business is located is within 100 feet of Paradise Creek Park, which is considered a sensitive area.

(8) The use is located more than 100 feet from Kimball Elementary School.

(9) The use is not located in close proximity to residential uses.

(10) The use performs no work off-site or in the public right of way.

h) Any other relevant factors.

(1) The Price/Earnings Ratio (P/E Ratio) was determined by the City's business valuation consultant, because the P/E Ratio indicates the number of years of earnings that it takes to recover the value of the business. Using standard business valuation sources, the P/E Ratio was determined to be in the range of 1.64 to 2.77. By converting the

P/E Ratio into years, the business owners are allowed to earn the business's net income for that number of years, thereby recovering the fair market value of their investment. Accordingly, the reasonable amortization period that would allow for the recovery of the business owners' investment, based upon the analysis of the City's business valuation consultant, is in the range of 1.64 to 2.77 years.

2. That based upon the above findings, and in particular, the findings that the historical cost of the land and improvements is irrelevant in determining a reasonable amortization period for the business at that location, that the automotive repair business has been operated at this location longer than the period necessary for the owners to recover their investment, that the use is significantly nonconforming with the uses allowed in the Limited Commercial zone, that the use is not compatible with the uses allowed in the Limited Commercial zone, and that the specialized automotive repair use at this location presents a threat to the public health, safety, and welfare, the Commission further finds and determines that the specialized automotive repair use at 108 W. 18th Street should be terminated.
3. That based upon the above findings, and in particular, the findings that the historical cost of the land and improvements at 108 W. 18th Street is irrelevant in determining a reasonable amortization period for the business at this location, that the specialized automotive repair business has been operated at this location longer than the period necessary for the owners to recover their investment, that the use is significantly nonconforming with the uses allowed in the Limited Commercial zone, that the use is not compatible with the uses allowed in the Limited Commercial zone, and that the specialized automotive repair use at this location presents a threat to the public health, safety, and welfare, the Commission further finds and determines that the reasonable time within which the nonconforming specialized automotive repair use at 108 W. 18th Street should be terminated is 1.64 years (1 year and 234 days) from the date of final action by the City Council.

BE IT FURTHER RESOLVED that the Planning Commission recommends to the City Council that the City Council order the termination of the nonconforming specialized automotive repair use located at 108 W. 18th Street.

BE IT FURTHER RESOLVED that the Planning Commission recommends to the City Council that the time period within which the nonconforming automotive repair use located at 108 W. 18th Street be ordered to cease its current operations is 1.64 years (1 year and 234 days) from the date of final action by the City Council.

Resolution No. 23 - 2013
Page Seven
September 16, 2013

BE IT FURTHER RESOLVED that this action is not considered a project as defined in the California Environmental Quality Act since it does not have the potential to result in either a direct or a reasonably foreseeable indirect physical change in the environment, and is thereby not subject to the California Environmental Quality Act.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of September 16, 2013, by the following vote:

AYES: Alvarado, Bush, Pruitt, Baca, Garcia

NAYS: DeLa Paz

ABSENT: None

ABSTAIN: Flores



CHAIRMAN